

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

11-CR-6161L

v.

J. GUADALUPE HERNANDEZ,

Defendant.

This Court referred all pretrial motions in this case to United States Magistrate Judge Jonathan W. Feldman pursuant to 28 U.S.C. § 636(b). Defendant filed motions, including a motion to dismiss on the grounds that the Government failed to indict him within thirty (30) days of his arrest as required by 18 U.S.C. § 3161(b). After receiving briefs on the issue and conducting a hearing, Magistrate Judge Feldman issued a Report and Recommendation (Dkt. #37) recommending that this Court dismiss the indictment but without prejudice.

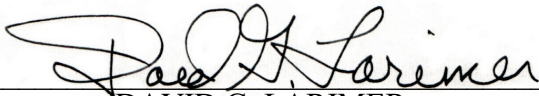
This Court received correspondence from both the Government (Dkt. #38) and defense counsel (Dkt. #39) and both indicated they did not intend to file objections to the Magistrate Judge's Report and Recommendation.

I have reviewed the Magistrate Judge's thorough Report and Recommendation and find no reason to alter, modify or reverse that Report and Recommendation. I, therefore, adopt in all respects the Magistrate Judge's Report and Recommendation. I agree with the Magistrate Judge's assessment that although the motion to dismiss should be granted, there is ample reason to grant the motion, without prejudice. I agree with Magistrate Judge Feldman's assessment and conclusion that the facts clearly warrant dismissal without prejudice.

CONCLUSION

I accept and adopt the Magistrate Judge Feldman's Report and Recommendation (Dkt. #37).
I grant defendant's motion to dismiss the indictment for violation of the Speedy Trial Act but the dismissal is without prejudice pursuant to 18 U.S.C. § 3162(a)(2).

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
February 15, 2012.